

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

60389

FILE: B-184517

DATE: January 14, 1976

MATTER OF: Instrutek, Inc.

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DIGEST:

1. Request by unsuccessful bidder that contract be rescinded due to misunderstanding by successful bidder of specifications is denied since record does not show that contracting officer was on notice of any misunderstanding by successful bidder, and award was made to low responsive and responsible bidder.
2. Request by unsuccessful bidder that contract be terminated due to unlikelihood that successful bidder will comply with contract is matter for resolution by agency in course of administration of contract, rather than matter for resolution under GAO Bid Protest Procedures.

Invitation for bids (IFB) No. 2-76, issued on May 6, 1975, by the United States Public Health Service Hospital, Staten Island, New York, solicited bids for electrical safety inspection services. The six bids received in response to the IFB were opened on June 6, 1975. The bids received were as follows:

<u>Bidder</u>	<u>Price</u>
MET Electrical Testing Co.	\$ 12,870
Riverside Engineering	13,990
Instrutek, Inc.	24,375
Energy Technical Services	59,000
Aero-Nav Labs	95,000
Detroit Testing Labs	225,000

The Government estimate was \$18,000. An award to the lowest bidder, MET Electrical Testing Co. (MET), was made on July 1, 1975.

Instrutek Inc., the third low bidder, protests the award of the contract to MET on the ground that MET misunderstood the specifications in the IFB. Instrutek requests that the contract awarded to MET be rescinded due to the failure of the Government to determine prior to award that MET understood the specifications as requiring that inspections in "high risks" areas must be made monthly, rather than quarterly and semi-annually as it is contended is MET's understanding.

Two steps were taken by the Government, prior to awarding the contract, to ascertain whether MET was capable of performing and whether the bid submitted by MET reflected its intended price. First, a preaward survey was requested on June 12, 1975, and subsequently completed on June 20, 1975. The purpose of the survey was to evaluate the prospective contractor's performance capability under the terms of the proposed contract, pursuant to § 1-1.1205-4 of the Federal Procurement Regulations (1964 ed.). There is no evidence that the preaward survey, which recommended award, was not conducted in accordance with applicable procedures.

Second, since MET's price was approximately one-third lower than the Government's estimate, MET was requested to confirm that its price was for performance in full compliance with the specifications. On June 12, 1975, via telegram, MET confirmed its price and intention to fully comply with the specifications, to which its bid was fully responsive.

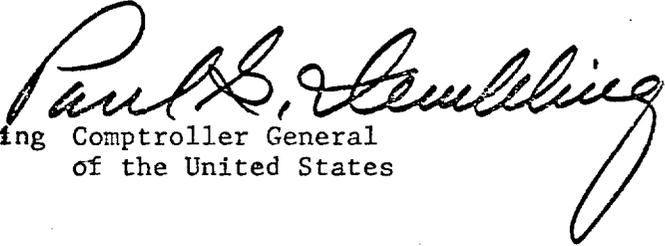
A contracting officer who suspects a mistake in a bid must apprise the bidder of the mistake suspected and the basis for his suspicion. 44 Comp. Gen. 383 (1965). In this case, the contracting officer did not direct MET's attention to the requirement in the specifications for monthly inspections since he had no indication that MET had misinterpreted specifications as contended by Instrutek. The contracting officer satisfied his bid verification duty by requesting the bidder to confirm that the bid was for a job in full compliance with the specifications. Cf. 54 Comp. Gen. 545 (1974).

Since MET was asked to and did verify its bid, which was responsive to the IFB, and since MET was determined to be a responsible prospective contractor, the subsequent acceptance of the bid by the Government created a binding contract. Alabama Shirt & Trouser Co. v. United States, 121 Ct. Cl. 313 (1952); 37 Comp. Gen. 786 (1958); 53 id. 545 (1974). In these circumstances, there is no legal basis for our Office to direct a rescission of that contract.

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Instrutek further requests that since MET is not likely to comply with the requirement of the contract that testing in high risks situations be conducted monthly rather than quarterly, the contract should be terminated by the Government. On the record before us, we have no basis to conclude that MET will not comply with the contract specifications. In any case, this contention does not relate to the legality of the award process, but rather is properly for resolution by the contracting agency during the course of contract administration. Social Systems Training and Research, Inc., B-182361, May 14, 1975, 75-1 CPD 294; Edward E. Davis Contracting, Incorporated, B-179719, B-179720, January 29, 1974, 74-1 CPD 37. Furthermore, the propriety of terminating the contract, as requested by the protester, must be resolved by the contracting parties pursuant to any applicable contract provisions and is not a proper matter for protest to this Office. Ampex Corporation, B-179969, February 7, 1974, 74-1 CPD 58.

Since we have concluded that the contract was properly awarded, and that the consequences of the alleged mistaken interpretation of the specifications by the successful bidder involves a matter of contract administration by the contracting agency, Instrutek's protest is denied.


Acting Comptroller General
of the United States